

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 19, 2013

In the Matter of A. STAMKOFF, Minor.

No. 310161
Livingston Circuit Court
Family Division
LC No. 2009-012690-NA

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii) (desertion) (c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (child would be harmed if returned to the parent). We affirm.

I. BASIC FACTS

The child was born on September 3, 2008, testing positive for marijuana. Respondent and the child's mother had a violent relationship, and respondent was arrested for assaulting the child's mother. Despite a no contact order, respondent remained in the home, and both the mother and respondent admitted to continued marijuana use in front of the child. The child was first removed from mother's care on January 2, 2009, because of drug use and domestic violence. The child was returned in February 2010, after mother complied with the parent agency agreement.

The petition in this case was filed on October 8, 2010, and included the child and her younger half-sibling, who was born on September 25, 2009. The petition alleged that mother did not benefit from prior services because she continued to use drugs and make poor choices when it came to her relationships with abusive men. The petition focused mostly on the mother, but did include allegations against respondent.

On March 18, 2011, respondent pleaded to the allegations in the petition: he was on probation for felony assault and interfering with electronic communication against the mother; he was unemployed; he was behind in child support; he had a pending OWI charge and probation violation for a positive marijuana screen; and, he had not visited with the child since February 2010. That same day, respondent was ordered to: complete a psychological evaluation and follow all recommendations, complete a domestic violence program, complete a substance abuse evaluation and follow all recommendations, submit to random drug screens, complete parenting

classes, maintain contact with his caseworker, maintain legal employment, complete a money management class, and maintain suitable housing.

The trial court terminated respondent's parental rights on April 13, 2012, having concluded that respondent was only in partial compliance with court-ordered services and that he had not benefited from the services provided. Respondent now appeals as of right.

II. STANDARD OF REVIEW

A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence. Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo Minors*, 462 Mich 341, 356–357; 612 NW2d 407 (2000); see also MCR 3.977(K). A trial court's decision is clearly erroneous "[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted; alteration in original). [*In re Olive/Metts Minors*, 297 Mich App 35, 40–41; 823 NW2d 144 (2012).]

III. ANALYSIS

The trial court did not clearly err in finding that the statutory grounds for termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence.¹

At the outset, we note with concern the fact that the trial court consistently denied respondent's requests for supervised visitation. A trial "court *shall* permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time." MCL 712A.13(11) (emphasis added). As such, parenting time can only be conditioned if the visitation may be harmful for the child and after the child undergoes a psychological evaluation and/or counseling. See *In Re Mason*, 486 Mich 142, 163 n 13; 782 NW2d 747 (2010). Therefore, a blanket policy that conditions parenting time, including supervised parenting time,

¹ Thus, we need not address the father's contention that the trial court erred in terminating his parental rights pursuant to MCL 712A.19b(a)(ii). An erroneous termination of parental rights under one statutory basis is harmless error if the court properly terminated rights under another statutory ground. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

upon respondent's compliance with the PAA, without following the statutory framework, is contrary to Michigan law. Nevertheless, in spite of the irregularity, we conclude that statutory bases existed for terminating respondent's parental rights.

The conditions that led to adjudication included substance abuse, domestic violence, criminality, and poor parenting. Respondent failed to comply with the necessary aspects of the parent agency agreement (PAA) even when parenting time was contingent on participation. Although the trial court was acting outside of the law when it conditioned parenting time on respondent's participation without first ordering a psychological evaluation or counseling, we are troubled by respondent's failure to undertake the steps necessary to meet the trial court's directive. Respondent's failure to actively pursue the PAA with knowledge that his failure to do so would impact his ability to see the child demonstrated indifference. Respondent testified that he knew what was required of him to have parenting time – specifically that he needed to complete a substance abuse assessment; nevertheless, respondent failed to complete the assessment until January 2012, even though one was scheduled in May 2011. Respondent also continued to miss drug screens, or he would take them on the day following when he was called. Respondent tested positive for marijuana during the case and was charged with a drinking and driving offense. Although respondent completed a domestic violence program, he violated his probation with threatening and intimidating behavior against his own mother. Respondent spent 30 days in jail. He started, but had not yet completed, a parenting class. Respondent demonstrated a lack of engagement in services until termination was pending. A parent must not only participate in, but demonstrate benefit from services. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds. Based on the foregoing evidence, the trial court did not err in finding that the conditions leading to the adjudication continued to exist and there was no reasonable likelihood that the conditions would have been rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i). Nor did the trial court err in finding that respondent failed to provide proper care or custody for the child and there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g). Finally, the trial court did not err when it determined that there was a reasonable likelihood that the child would have been harmed if returned to respondent. MCL 712A.19b(3)(j).

We note that if a bond failed to exist between respondent and the child, it was due, at least in significant part, to the trial court's unreasonable refusal to allow visitation throughout the duration of the case. Nevertheless, the evidence revealed that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). Respondent had only cared for the child during the first month of her life. The child had not seen respondent in approximately 18 months. Through his conduct, respondent demonstrated that seeing the child was not a priority. The child was entitled to permanence and stability. Thus, the trial court did not clearly err in finding termination was in the child's best interests.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood